

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

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In the Matter of

Federal-State Joint Board
On Universal Service

) **DOCKET FILE COPY ORIGINAL** FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

) CC Docket No. 96-45
)

COMMENTS OF THE RURAL INDEPENDENT COMPETITIVE ALLIANCE

The Rural Independent Competitive Alliance ("RICA") files these comments on the Recommended Decision of the Federal-State Joint Board on Universal Service ("Joint Board") pursuant to the Wireline Competition Bureau's *Public Notice* of November 5, 2002, DA 02-2976, 67 Fed. Reg. 71121 (Nov. 29, 2002). RICA is a national association of rural competitive local exchange carriers ("CLECs"). RICA members have brought modem and advanced telecommunications and information services to rural areas long neglected by large incumbents, and desire to continue to invest in technology to expand these public benefits under rational regulatory policies.

I BACKGROUND; INTEREST OF RICA

The decision of the U.S. Court of Appeals for the 10th Circuit in *Qwest Corp. v. FCC* holds that the current universal service support mechanism for non-rural carriers is fundamentally flawed because it addresses only comparability of rates among states, but fails to ensure reasonable comparability between urban and rural areas.¹ This flaw adversely affects RICA member rural CLECs because the current Federal Communications Commission ("Commission") rules provide that a CLEC that has been

¹ *Qwest Corp. v. FCC*, 99-9546 (10th Cir. Jul. 31, 2001). p.11, 258 F.3d 1191.

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designated an Eligible Telecommunications Carrier (“ETC”) receives only the per-line universal service support available to the incumbent local exchange carrier (“ILEC”) against which the CLEC competes, regardless of whether the CLEC’s costs are substantially higher or lower.² Where Universal Service Support is not “sufficient” to maintain comparable urban and rural rates for customers of non-rural ILECs, that support necessarily is also not sufficient to allow CLECs in rural areas to establish rates that are reasonably comparable to urban rates.

The Joint Board’s Recommended Decision addresses the urban-rural rate comparability concern by proposing that the Commission retain the existing mechanism, but also “induce” states to achieve reasonably comparable rates by expanding the state certification process “to require states to certify that the basic service rates in high-cost areas ... are reasonably comparable to a national rate benchmark.” Where rates in a state exceed the benchmark, the state would be allowed to request additional federal support upon a showing that all available state and federal resources have been unable to achieve comparable rates.⁴ For the reasons discussed below, RICA believes that this approach is unworkable, will not meet the requirements of the statute, and will not be found satisfactory by the court on remand.

² 47 C.F.R. § 54.307. The Commission **has** asked the Joint Board to consider whether changes to this rule are needed. *See*, In re Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order, FCC No. 02-307 (rel’d Nov. 8, 2002). RICA advocates replacing the current process with one in which each ETC receives support based upon its own costs. *See, Comments of The Rural Independent Competitive Alliance*, in In re Petition for Rulemaking to Define “Captured” and “New” Subscriber Lines for **Purposes** of Receiving Universal Service Support Pursuant to 47 C.F.R. § 54.307 et seq., RM No. 10522 (filed Sept. 23, 2002).

³ *Recommended Decision*, FCC 02J-2, para. 50.

⁴ *Id.*

II THE JOINT BOARD'S RECOMMENDED DECISION WILL NOT CURE DEFECTS IDENTIFIED BY THE COURT

The Joint Board's recommendation to increase reporting requirements in order to determine whether urban and rural rates really are comparable is a necessary first step, if it could be accomplished. The Joint Board recognizes, however, that there are substantial difficulties in comparing local rates. It proposes the use of a basic service rate template to obtain as close an "apples to apples" comparison as possible. RICA does not quarrel with requiring reporting, or with the necessity of ensuring that comparability tests are valid. However, as Commissioner Rowe points out in his Statement accompanying the Joint Board's Recommended Decision, the complexities are much more substantial than the Joint Board appears to appreciate.⁵

Assuming, *arguendo*, that a rational system can be constructed utilizing both model based costs and actual rates not tied to those costs, the essential defect in the Joint Board's recommendation is that it does not go on from there to identify a mechanism that will meet requirements of the Telecommunications Act of 1996 ("Act"), for sufficiency and predictability of support. Instead, it proposes only an open-ended, ill-defined process for obtaining additional federal support.⁶ By failing to develop standards by which non-comparable rates can readily be determined, whether existing mechanisms have been

⁵ Separate Statement of Montana Public Service Commission ("PSC") Commissioner Bob Rowe, at 18.

⁶ Commissioner Copps' Statement alludes to this lack of definition by recognizing that the Joint Board essentially "punted" to the Commission the task of developing a mechanism to provide support where rates are not comparable.

fully utilized, or what additional support should be provided and from what source,⁷ the Recommended Decision will not comply with the standards set by the Act and the 10th Circuit.

In short, the proposed mechanism meets neither the “predictable” nor “sufficient” requirements of the Act. Instead, the proposal invites a standardless case-by-case approach that inevitably will produce arbitrary and inconsistent results, accompanied by substantial litigation costs. Unless the Commission resolves the issues raised in the dissents of Commissioner Martin and Montana Commissioner Rowe, it is highly unlikely that its decision on remand will satisfy the Court,

III CLEC SUPPORT SHOULD BE DECOUPLED FROM ILEC SUPPORT WHILE THE JOINT BOARD RECONSIDERS ITS RECOMMENDED DECISION

An obvious purpose of the statutory requirement for Joint Board participation in developing and revising rules for Universal Service Support is to obtain input from state commissions with more detailed experience in the actual workings of various parts of the industry as to both the policy implications and the administrative practicality of alternative Universal Service Support mechanisms. In this case, however, the Joint Board has left to the Commission a recommendation that from a policy perspective is at best shaky, and which entirely lacks in practical advice as to whether its policy choices are even workable. The consequence of this lack of precision is that putting into place any mechanism ensuring rural to urban comparability will necessarily be considerably delayed.

⁷ **RICA** agrees that urban-rural comparability cannot be determined by measuring the difference between **rural** rates **and** a benchmark that **is** an average of urban and rural rates.

In the meantime, as a consequence of both the inadequacies of support and excessive restrictions on allowable rates for interstate access, rural CLECs are not able to continue making investments in the technology necessary to bring modern and advanced telecommunications services to rural areas long relegated to “backwater” status by the large ILECs. RICA therefore urges the Commission to proceed promptly to decouple CLEC Universal Service Support from that of the incumbent. Rural CLECs are prepared to provide the same justification for Universal Service Support as rural ILECs, through either individual costs or use of a formula analogous to the Average Schedules.

IV CONCLUSION

For the reasons set forth above, the Rural Independent Competitive Alliance recommends that the Commission return the Recommended Decision to the Joint Board with the request that it develop a methodology that will permit a valid comparison of urban and rural rates, as well as a “specific” and “predictable” mechanism to provide support, whether state or federal or both, where rural and urban rates are not comparable. In the meantime, the Commission should decouple the support available to rural CLECs from the support provided the competing ILEC in order to more rapidly advance the goals of the 1996 Act to bring advanced services to all Americans.

Respectfully submitted

Rural Independent Competitive Alliance

By: David Cosson

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Its Attorney

December 20, 2002

CERTIFICATE OF SERVICE

I, Clifford Rohde, certify that on this 20th day of December, 2002, copies of the foregoing "COMMENTS OF THE RURAL INDEPENDENT COMPETITIVE ALLIANCE in CC Docket No. 96-45" were served on the parties indicated below via U.S. first class mail, hand-delivery, or e-mail, as indicated.

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